

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Chelsea Yogerst	Team: Squad #12	CCRB Case #: 201411582	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 11/15/2014 5:00 AM	Location of Incident: Inside the Residence Inn Hotel at 148 East 48th Street	Precinct: 17	18 Mo. SOL 5/15/2016	EO SOL 5/15/2016	
Date/Time CV Reported Mon, 11/17/2014 8:41 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 11/17/2014 8:41 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT James Slavin	2133	933362	017 PCT
2. POM Michael Pappalardo	14390	922937	017 PCT
3. Officers			017 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Randlov	14804	943718	017 PCT

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Abuse: Officers questioned § 87(2)(b)	
B.SGT James Slavin	Abuse: Sgt. James Slavin stopped § 87(2)(b)	
C.SGT James Slavin	Abuse: Sgt. James Slavin threatened to arrest § 87(2)(b)	
D.SGT James Slavin	Abuse: Sgt. James Slavin searched § 87(2)(b)	
E.SGT James Slavin	Abuse: Sgt. James Slavin frisked § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On November 15, 2014, at 5:00 a.m., § 87(2)(b) was on his way out of the Residence Inn Hotel lobby at 148 East 48<sup>th</sup> Street in Manhattan to smoke a cigarette when two officers approached him, asked him if he was a guest in the hotel and informed him that there had been a robbery and potential murder on the second floor (**Allegation A**). § 87(2)(b) replied to the officers saying that that was fine because he was staying on the fourth floor and returned to his room to tell his fiancée, § 87(2)(b) what had happened.

Approximately thirty minutes later, § 87(2)(b) returned to the lobby to smoke another cigarette. When he exited the elevator, he observed ten male officers. Sgt. James Slavin, of the 17<sup>th</sup> Precinct, ordered § 87(2)(b) to the front desk and asked the employees if they knew him. The employees responded by saying that they did not. Sgt. Slavin put § 87(2)(b) into handcuffs and told him that he was a potential suspect (**Allegation B**).

Sgt. Slavin threatened to “lock up” § 87(2)(b) and stated, “I’m going to take you to jail right now” (**Allegation C**).

Sgt. Slavin ordered § 87(2)(b) to sit down. Sgt. Slavin then temporarily confiscated § 87(2)(b)'s iPhone that was in his hand and proceeded to put his hands directly into each of § 87(2)(b)'s pockets (**Allegation D**). Following the search of each of § 87(2)(b)'s pockets, Sgt. Slavin removed the items that were located within them and then immediately placed the items back into the pocket.

Subsequently, Sgt. Slavin frisked in between § 87(2)(b)'s legs, on the outside of his pants. (**Allegation E**).

Officers brought witnesses of the crime to the lobby and each stated that they did not know § 87(2)(b). Sgt. Slavin released § 87(2)(b) after he had been handcuffed for approximately thirty-five minutes. § 87(2)(b) immediately called § 87(2)(b) to come down to the lobby. § 87(2)(b) then requested Sgt. Slavin's name and badge number. Sgt. Slavin provided his name and badge verbally. § 87(2)(b) who filed the complaint, did not witness the allegations.

This case was originally assigned to Investigator Alex Tuminello. On December 8, 2014, the case was reassigned to Investigator Chelsea Yogerst, § 87(2)(g).

The Residence Inn Hotel provided video surveillance footage of the hotel's front desk, lobby elevators and the entrance of the hotel from both the outside and inside of the lobby. § 87(2)(b) can be seen at various points entering and exiting the lobby doors. At one point, two officers, including Sgt. Slavin, can be seen leading § 87(2)(b) to the front desk to speak with § 87(2)(b). § 87(2)(b) the § 87(2)(b). After a brief conversation, Sgt. Slavin can be seen escorting § 87(2)(b) off camera. The video footage does not capture any further interaction between § 87(2)(b) and officers.

### Mediation, Civil, and Criminal Histories

§ 87(2)(b) and § 87(2)(b) were offered mediation but rejected it. § 87(2)(b)

On March 6, 2015, the New York City Comptroller's Office provided confirmation that § 87(2)(b) had not filed a notice of claim (encl. M-1).

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian and Officers CCRB Histories**

- Sgt. Slavin has been a member of the service for eleven years and has nine other CCRB cases where various allegations were unsubstantiated, exonerated, mediated or the complainant was uncooperative. § 87(2)(g) (encl. A-1-A-2).
  - In CCRB case 200704978, allegations of question and/or stop and failure to produce stop and frisk report was substantiated and as a result, Sgt. Slavin received command discipline.
- PO Pappalardo has been a member of the service for sixteen years and has four other CCRB cases where various allegations were unsubstantiated or exonerated. § 87(2)(g) (encl. A-3).
  - In CCRB case 200509687, an allegation of discourtesy was substantiated and as a result, PO Pappalardo received instructions.
- This is § 87(2)(b)'s and § 87(2)(b)'s first CCRB complaint (encl. A-4 - A-5).

### **Findings and Recommendations**

#### **Recommendations**

##### **Allegation A-Abuse of Authority: Officers questioned** § 87(2)(b)

It is undisputed that officers were investigating on ongoing robbery. § 87(2)(b) alleged that two officers approached him, asked him if he was a guest in the hotel and informed him that there had been a robbery and potential murder on the second floor.

All officers interviewed denied questioning § 87(2)(b) prior to stopping him.

An officer is permitted to make a request for information from a civilian, and can ask questions pertaining to the civilian's identity, destination, and reason for being in a given area, provided the officer has an objective, credible reason for doing so. People v. Hollman, 79 N.Y.2d 181 (1992) (encl. CC-1 - CC -6).

§ 87(2)(g)

##### **Allegation B-Abuse of Authority: Sgt. James Slavin stopped** § 87(2)(b)

##### **Allegation E-Abuse of Authority: Sgt. James Slavin frisked** § 87(2)(b)

It is undisputed that Sgt. Slavin stopped and frisked § 87(2)(b) in the lobby area. § 87(2)(b) alleged that after he returned to the lobby to smoke a cigarette, Sgt. Slavin ordered him to the front desk. After § 87(2)(b) complied, Sgt. Slavin handcuffed him and frisked the outside of his pants.

Sgt. Slavin testified that he was informed by the robbery victim that the perpetrators were two black men and women, approximately eighteen to twenty years old. The victim also provided officers with a description of the perpetrator's clothing, however Sgt. Slavin could not recall what the description included. Sgt. Slavin could not further describe the perpetrators. Aside from the robbery suspects' sex, race, age and a clothing description, he was not provided with any additional information about the perpetrators prior to stopping § 87(2)(b).

Sgt. Slavin stated that when he first entered the lobby, § 87(2)(b) did a "double take", meaning that he initially looked at him, looked away, and then looked back at him. At this time, § 87(2)(b) also began to press the keys on his phone very rapidly and slid back on the couch in order to evade officers. Sgt. Slavin believed at this point that § 87(2)(b) may have been involved in the robbery based on his behavior because in his professional experience in the past, perpetrators have acted in a nervous manner and in an uncomfortable way when they saw police officers.

Sgt. Slavin sent a sector to the lobby to see if any individuals matched the descriptions given by the victim and when they returned, they confirmed that there were individuals within the lobby who matched the physical and clothing descriptions of the perpetrators. When Sgt. Slavin returned to the lobby, he saw § 87(2)(b) walk into the lobby after being outside. § 87(2)(b) is a black male and was forty three at the time of the incident.

Sgt. Slavin stopped § 87(2)(b) in the lobby area and asked him some general questions. In response to the questioning, § 87(2)(b) had an agitated, evasive and uncooperative demeanor. In addition, § 87(2)(b) began to touch and reposition an object near his waistband area in his right pocket. Sgt. Slavin could not describe the dimensions or the shape of the object. § 87(2)(b) also began to move his body and step away from Sgt. Slavin multiple times. It was then that Sgt. Slavin handcuffed § 87(2)(b).

Sgt. Slavin frisked § 87(2)(b) because he was evasive while being questioned and for his and PO Pappalardo's safety. During the search, § 87(2)(b) turned the right side of his body away from Sgt. Slavin. Sgt. Slavin felt a hard object, the dimensions of which he could not describe, in § 87(2)(b)'s right front pant pocket.

Sgt. Slavin indicated that it was unclear whether the perpetrators involved in this incident were armed; however he denied receiving any information or speaking to any officers who indicated that the perpetrators definitely were armed. Sgt. Slavin explained that oftentimes, a robbery in progress is a violent crime and those involved in a robbery are armed.

Sgt. Slavin explained that after § 87(2)(b) was handcuffed, a show up occurred in the lobby in order to identify the perpetrators. This process involved officers escorting the possible suspects through the lobby, one at a time, so that they could be identified by the victim. While this was occurring, the victim was placed behind a curtain in the lobby so that he was not seen by officers or civilians.

During the showup, the robbery victim identified the four individuals that robbed him and they were subsequently arrested. At that time, an officer informed Sgt. Slavin that the robbery victim indicated that § 87(2)(b) could have been involved. When Sgt. Slavin spoke with the victim and asked him if he could positively identify § 87(2)(b) as being related to the incident, he stated he could not. Sgt. Slavin then released § 87(2)(b) from the handcuffs.

PO Pappalardo stated that Sgt. Slavin stopped § 87(2)(b) who had walked into the lobby, and asked him if he was a guest at the hotel and for his pedigree information. § 87(2)(b) was being evasive with his answers and appeared to be agitated and bothered. PO Pappalardo additionally testified that while Sgt. Slavin frisked § 87(2)(b), § 87(2)(b) turned away from Sgt. Slavin indicating that he didn't want to be touched on his right side and so that Sgt. Slavin could not see what was in his waistband.

PO Randlov did not see Sgt. Slavin stop or frisk § 87(2)(b) or any other civilian. He corroborated Sgt. Slavin's testimony that a show-up did occur and was solely responsible for bringing one of the perpetrators down into the lobby to be identified.

According to N.Y.S Criminal Procedure Law 140.50 (1), a police officer may stop a person when he reasonably suspects that such person is committing, has committed or is about to commit a crime (encl. AA-1). Reasonable suspicion to stop and detain a suspect for purpose of a showup identification procedure is based on a combination of the following factors: whether or not the suspect matches a provided description, the suspect's temporal and spatial proximity to the crime and the suspect's behavior. People vs. Whittle, 102 A.D. 3d 710 (2<sup>nd</sup> Dept.-2013) (encl. AA-2 - AA-3).

In order to frisk a person, an officer must have reasonable suspicion that the person is armed People V. DeBour, 40 N.Y.2d 201 (1976) (encl. BB-1-BB-11). An officer has the right to frisk a detained individual fitting the description of a violent crime pending the showup identification by the complainant and given the nature of the crime being investigated. People v. Torres, 239 A.D. 2d 154 (1997-1<sup>st</sup> Dept.) (encl. DD-1).

§ 87(2)(g)



**Allegation C-Abuse of Authority: Sgt. James Slavin threatened to arrest § 87(2)(b)**

§ 87(2)(b) alleged that Sgt. Slavin told him that he was a potential suspect, threatened to “lock him up” and stated, “I’m going to take you to jail right now.”

§ 87(2)(b) the § 87(2)(b) at the Residence Inn, stated that after Sgt. Slavin handcuffed § 87(2)(b) he explained that he was not under arrest yet and they just needed to figure out what was going on.

Sgt. Slavin testified that he explained to § 87(2)(b) the reasons for the stop and explained to him that if during the course of his investigation he was found culpable, they would be affecting an arrest. Sgt. Slavin denied that he ever told § 87(2)(b) specifically that they were going to “lock him up” or that he was a potential suspect.

PO Pappalardo denied that he ever heard an officer threaten to arrest § 87(2)(b) PO Randlov denied witnessing any interaction between Sgt. Slavin and § 87(2)(b)

§ 87(2)(g)

**Allegation D-Abuse of Authority: Sgt. James Slavin searched § 87(2)(b)**

§ 87(2)(b) alleged that Sgt. Slavin ordered him to sit down and then proceeded to put his hand directly into each of § 87(2)(b)'s pockets. Following the search of each of § 87(2)(b)'s pockets, Sgt. Slavin removed the items that were located within them and then immediately placed them back into the pocket. During the search, he had iPhone in his hand which was temporarily confiscated by Sgt. § 87(2)(b)

§ 87(2)(b) did not see § 87(2)(b) get searched by any officers and testified that § 87(2)(b) never complained of such.

According to § 87(2)(b) an officer requested to § 87(2)(b) to take his cell phone out of his back pants pockets. Although § 87(2)(b) was already handcuffed, he was able to do so.

Sgt. Slavin denied that he ever put his hands inside § 87(2)(b)'s pockets. During the frisk, Sgt. Slavin indicated that he felt a large object that he could not describe the dimensions of. Sgt. Slavin asked § 87(2)(b) to take his phone out of his pocket and give it to him. § 87(2)(b) § 87(2)(b) complied. Sgt. Slavin believed that he had been given consent from § 87(2)(b) to take his phone because when he asked § 87(2)(b) for it, he provided it.

PO Pappalardo denied that he ever saw Sgt. Slavin put his hands in § 87(2)(b)'s pockets and denied seeing any bulges on § 87(2)(b) PO Randlov stated that he did not see Sgt. Slavin search § 87(2)(b) or any other civilian.

§ 87(2)(g)

To perform a search, an officer must have probable cause to believe that the person committed a crime. People v. Debour, 40 N.Y.2d 201 (1976) (encl. BB-1 - BB-11). An officer cannot request for consent to search without any founded suspicion that criminality is afoot. People v. Hollman, 79 N.Y.2d 181 (1992) (encl. CC-1 - CC -6).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

[illegible]

Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Supervisor: \_\_\_\_\_

_____	_____	_____
Title/Signature	Print	Date

Reviewer: \_\_\_\_\_  
 Title/Signature                      Print                      Date

Reviewer: \_\_\_\_\_  
 Title/Signature                      Print                      Date

